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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,055	07/25/2003	Timothy R. Machold	RADME-64499	4139

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/628,055	MACHOLD ET AL.	
	Examiner	Art Unit	
	Robert L. Nasser	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-29 and 36-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-29 and 36-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/31/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

Claims 36 is object top because the word pattern is spelled patter.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 24 and 26-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6673098. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are merely broader versions of the patented claims, and , as such, are covered by the patented claims.

Claim 22 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6695874. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely differently worded versions of each other, and as such cover each other.

Claims 25, and 36-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S.

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Patent No. 6673098 in view of Kolen et al. Kolen teaches using a constant pressure circulation pump in column 6, line 41. The examiner takes official notice that is known to drive a pump to produce constant pressure out by supplying it with constant current. Hence, it would have been obvious to modify the previous invention to use such a pump, as it is merely the substitution of one known equivalent pump for another.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Knapp et al. Knapp et al shows a system including a cassette 10 having a pump head located therein. In addition, it has a fluid inlet and outlet (to the right on the cover) and a heat exchanger to the left of element 14. The examiner notes the unit of Knapp et al is capable of being placed in communication with and type of source, including a heating/cooling source. Therefore, Knapp anticipates the claims.

Claims 22 is rejected under 35 U.S.C. 102(b) as being clearly by Fontenot 5174285.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontenot in view of Kolen et al 5980561. Kolen teaches using a constant pressure circulation pump in column 6, line 41. The examiner takes official notice that it is known to drive a pump to produce constant pressure out by supplying it with constant current. Hence, it would have been obvious to modify Fontenot to use such a pump, as it is merely the substitution of one known equivalent pump for another.

Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp et al in view of Parrot et al. Parrot et al teaches that it is known to use a pressure regulator valve in a peristaltic pump to control the rate of fluid flow. Therefore, it would have been obvious to modify Knapp et al to use such a regulator, to control the rate of fluid flow and ensure proper and safe operation.

Claims 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontenot in view of Bailey. Fontenot teaches all of the claim features except for the pressure regulator. Bailey teaches that maintaining proper pressure in the system with a pressure regulator will help maintain the desired temperature. Hence, it would have been obvious to modify Fontenot to use such a regulator, to achieve more precise control of temperature.

Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontenot. Applicant has not stated that the shape of the vane or the type of pump used is for a particular purpose or that it solves a stated problem. As such, the exact shape of the vane and the type of pump used would have been a mere matter of design choice.

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for one skilled in the art, as all pumps and shapes appear to function equally as well as the other. The exact type of pump would have been obvious to one skilled in the art.

Claims 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontenot in view of Bailey and Kolen et al 5980561. Fontenot teaches the claimed invention except the pressure regulator and constant current controller. Bailey teaches that maintaining proper pressure in the system with a pressure regulator will help maintain the desired temperature. Hence, it would have been obvious to modify Fontenot to use such a regulator, to achieve more precise control of temperature. Kolen further teaches using a constant pressure circulation pump in column 6, line 41. The examiner takes official notice that is known to drive a pump to produce constant pressure out by supplying it with constant current. Hence, it would have been obvious to modify the above combination to use such a pump, as it is merely the substitution of one known equivalent pump for another.

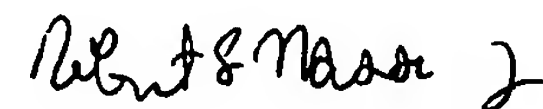
Claims 36-43 would be allowable if the double patenting rejection were overcome, as none of the art shows the structure of the heat exchanger, as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
June 24, 2004

ROBERT L. NASSER
PRIMARY EXAMINER